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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/660,433	09/07/2000	Kip Van Steenburg	7175/65430	6205

7590 06/15/2009  
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EXAMINER
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TRETTEL, MICHAEL

ART UNIT	PAPER NUMBER
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3673

MAIL DATE	DELIVERY MODE
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06/15/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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## **DETAILED ACTION**

### ***Reissue Applications***

The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

The applicant has essentially reproduced the independent claims verbatim within the declaration, prefacing each claim with a statement "I failed to claim...". This does not identify any one single error relied upon to support the reissue application. As set forth in more detail in MPEP § 1414 (II):

In addition, it is not sufficient to merely reproduce the claims with brackets and underlining and state that such will identify the error. See *In re Constant*, 827 F.2d 728, 729, 3 USPQ2d 1479 (Fed. Cir.), cert. denied, 484 U.S. 894 (1987). Any error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error. A statement of "... failure to include a claim directed to ..." and then presenting a newly added claim, would not be considered a sufficient "error" statement because applicant has not pointed out what the other claims lacked that the newly added claim has, or vice versa. Such a statement would be no better than saying in the reissue oath or declaration that "this application is being filed to correct errors in the patent which may be noted from the change made by adding new claim 10." In both cases, the error has not been identified. Likewise, a statement of the error as "... the inclusion of claims 3-5 which were unduly broad ..." and then canceling claims 3-5, would not be considered

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a sufficient " error" statement because applicant has not pointed out what the canceled claims lacked that the remaining claims contain. The statement of what the remaining claims contain need not identify specific limitations, but rather may provide a general identification, such as " Claims 3-5 did not provide for any of the tracking mechanisms of claims 6-12, nor did they provide an attachment mechanism such as those in claims 1-2 and 9-16."

Claims 1-52 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

### ***Response to Arguments***

Applicant's arguments filed April 13, 2009 have been fully considered but they are not persuasive. As noted above the amended reissue declaration is still defective since it fails to specify at least one error being corrected. Reciting the contents of the independent claims as a means for specifying the error does not form a proper response for doing so. It is suggested that the applicant closely study MPEP § 1414 for specific examples of how to properly specify at least one error being corrected by the declaration.

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***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is (571) 272-7052. The examiner can normally be reached on Monday, Tuesday, Thursday, and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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